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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/808,163	03/24/2004	Walter C. Sadakierski	D-30342-01	4809
7590		03/14/2006	EXAMINER	
Sealed Air Corporation		HARMON, CHRISTOPHER R		
P.O. Box 464		ART UNIT		
Duncan, SC 29334		PAPER NUMBER		
		3721		
DATE MAILED: 03/14/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/808,163

Applicant(s)

SADAKIERSKI ET AL.

Examiner

Christopher R. Harmon

Art Unit

3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 January 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 December 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>10/6/05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fuss et al. (US 6,560,948) in view of Mills et al. (US 4,461,455).

Fuss et al. discloses a method and system for supplying packaging cushions comprising cushion supply machine adapted to manufacture a string of cushions 73; lift (air conveyor/blower not shown, see column 2, lines 26-28); hopper 87 with entrance opening accepting cushions from roller 88 and lower exit openings in the sides; see figures 1 and 12.

Fuss et al. do not disclose the use of a movable lift between two positions, however Mills et al. teaches a platform elevator operating with jackscrews 64a and 66a on a tower frame with platform 76, backed up by hydraulic cylinders 142 and 144. Mills discusses chain hoists as previous alternatives; see column 1, lines 50-55.

It would have been obvious to one of ordinary skill in the art to include an elevator lift such as provided by Mills et al. in the invention to Fuss et al. in order to handle a heavier fill product if desired.

The common knowledge modification previously taken regarding the substitution of hydraulic cylinders or a hoist for jackscrews is taken to be admitted prior art because applicant failed to adequately traverse the examiner's assertion of official notice.

It would have been obvious to one of ordinary skill in the art to substitute hydraulic cylinders or a hoist for the jackscrews in the invention to Mills et al. for lifting the platform.

3. Claims 1-8, 16-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown (US 6,672,033) in view of Garand et al. (US 5,542,623).

Brown supplies a chain of packaging cushions 17, 159 to hopper 26 via air conveyor 58, 139; see all figures. Brown does not disclose moving supply machine 16 to multiple stations (reload and supply). Due to the traversal of the previous common knowledge modification (OFFICIAL NOTICE), Garand et al. teach a system comprising a lift 10 for moving supply roll 53 from a reload position to a supply position; see figure 7. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the lift of Garand et al. in the invention to Brown in order to raise the supply and lessen the stress on air conveyor 58, 151. Regarding claims 17-18, see figure 16.

4. Alternatively, claims 1-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown (US 6,672,033) in view of Mills et al. (US 4,461,455).

Brown discloses a tower for air conveyor lift 139 (figure 16) however does not disclose a jackscrew, hoist or hydraulic lift for conveying the supply machine.

It would have been obvious to one of ordinary skill in the art to include an elevator lift such as provided by Mills et al. in the invention to in order to move the supply machine to different positions instead of transporting the packages vertically by air conveyor.

It is deemed admitted as prior art that it would have been obvious to one of ordinary skill in the art to substitute hydraulic cylinders or a hoist for the jackscrews in the invention to Mills et al. for lifting the platform.

Response to Arguments

5. Applicant's arguments, filed 10/6/05, with respect to the rejection of claims 5-6 have been fully considered and are persuasive. *Amgen, Inc. v. Chugai Pharmaceutical Co.*, 927 F.2d 1200, 18 USPQ2d 1016 (Fed. Cir. 1991) is more on point regarding the issue of "at least about"; see MPEP 2173.05(b). The examiner agrees with applicant due to the specification of the lift apparatus in page 5, second paragraph. The term "at least about 5 feet" is construed to be within the range of 4.5-5.5 feet due to the fact that the specification lists a range documenting 1 foot increments. The rejection under 35 USC 112 has been withdrawn.

Applicant's other arguments filed 10/6/05 have been fully considered but they are not persuasive. Hopper 15 of Fuss is not a hopper for accepting the completed products. However hopper 87 is considered to have both openings as claimed; see above.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that

any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, a lift mechanism is desired for raising a cushion supply machine. The invention to Fuss recognizes a plurality of storage devices most of which with guide mechanisms; see figures 10-15. Figure 10 shows a guide mechanism comprising elements 81 and 78 that guides the cushion products 73 below the opening of hopper 76 and then above. Note cushions 73 are lifted over roller 88 in figure 12. A mechanical lift would be generally available to one of ordinary skill in the art as an alternate mechanism for assisting in guiding ie. allow for multiple delivery positions. The examiner previously set forth the motivation "if a heavier fill product is desired" to show that mechanical equipment might be

reasonably looked to could if the task due to the weight of a fill product was burdensome.

Regarding the common knowledge modification previously taken (Official Notice), in order to adequately traverse such a finding, an applicant must specifically point out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art. See 37 CFR 1.111(b). See MPEP 2144.03(c) and also *Chevenard*, 139 F.2d at 713, 60 USPQ at 241.

Regarding the arguments concerning Brown, see above paragraph 3.

Regarding the arguments concerning Brown in view of Mills, In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in

the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Brown uses an air conveyor for transporting the supply. A mechanical lift is generally available to one of ordinary skill in the art to be used to lift the supply machine rather than the product and thereby accomplishing the same effect ie. loading the opening of a hopper.

In response to applicant's argument that the objective evidence of record does not lead to the combination, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). Lifting a supplying mechanism to a higher position is considered obvious to one of ordinary skill in the art as is taught by both Mills and Garand et al.

Again, as discussed supra, the arguments concerning the common knowledge modification of the jackscrews is not adequate and therefore is deemed as admitted prior art.

Conclusion

6. Applicant's traversal necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

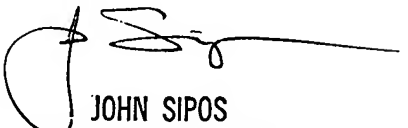
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher R. Harmon whose telephone number is (571) 272-4461. The examiner can normally be reached on Monday-Friday from 9-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on (571) 272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CH


JOHN SIPOS
PRIMARY EXAMINER



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